BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

IN RE:	**Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business HT Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans**	**Docket No. 2017-370-E**

PROPOSED ORDER OF
THE SOUTH CAROLINA PUBLIC SERVICE AUTHORITY

As a condition of the Commission's approval of the proposed Merger between South Carolina Electric & Gas Company ("SCE&G") and Dominion Energy ("Dominion") (together, the "Joint Applicants") in Docket No. 2017-370-E, the Commission finds that the creation of a Public Interest Fund in the amount of Three Hundred and Fifty-One Million Dollars ($351,000,000) for the benefit of the customers of the South Carolina Public Service Authority ("Santee Cooper") would serve the public interest. As detailed herein, Santee Cooper is owned by the people of South Carolina, for their benefit. The Joint Petitioners' proposals for implementing the Merger do not include any specified benefit for the ratepayers of Santee Cooper despite the fact that Santee Cooper, the state-owned utility, is a forty-five percent (45%) owner of the V.C. Summer Units 2 and 3 Project (the "Project"). This omission is material and adversely affects the public interest and the state of South Carolina. In order to best serve the public interest and serve the energy needs of the state, the Commission will approve the merger conditioned upon the creation of the aforementioned fund by Dominion.

Standard

The Commission is required to determine whether the Merger is in the public interest. *In Re Application of South Carolina Elec. & Gas Co.*, 2007 S.C. PUC LEXIS 113, at *6 (determining that an SCE&G rate case "presents issues of significant implication for the utility and the public interest," and consequently the Commission convening an evidentiary hearing to consider whether settlement of the proceeding "is just, fair, reasonable, [and] in the public interest"). The General Assembly vested the Commission with its regulatory authority and created the Commission "to regulate common carriers and utilities serving the public as, and to the extent, required by the public interest." 1980 Act No. 440, Section 1.

The General Assembly defines public interest in the context of proceedings before the Public Service Commission as "the concerns of the using and consuming public with respect to public utility services, regardless of the class of customer and preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services." S.C. Code Ann. § 58-4-10(C) (as amended in 2018, Act No. 258).

Analysis

I. The Commission is vested with the authority to condition the merger upon the creation of a Public Interest Fund pursuant to Santee Cooper's request.

It is Joint Petitioners' request that empowers the Commission to consider Santee Cooper's request for a Public Interest Fund. SCE&G, Santee Cooper's Project co-owner, and Dominion seek approval to merge. (Jt. Pet. p. 2, ¶1.) Santee Cooper intervened. (Santee Cooper Pet. to Intervene (Apr. 12, 2018); Order Granting Santee Cooper's Pet. to Intervene (Apr. 25, 2018).) In pre-hearing briefing, Santee Cooper filed a request for the Commission to establish a Public Interest Fund for the benefit of its ratepayers. (Pre-Hearing Brief of the South Carolina

Public Service Authority at pp. 1, 3, 9–11 (Oct. 26, 2018).) Santee Cooper participated in the proceeding before the Commission. (Merits Hr'g Tr. vol. 1, 12:17–23, 85:4-88:18 (Nov. 1, 2018) (Santee Cooper making an appearance on the record).) Santee Cooper presented evidence and cross-examined witnesses. (Merits Hr'g Tr. vol. 11, 2853:1-2860:7 (Nov. 15, 2018) (cross examination of James R. Chapman by William Hubbard); Merits Hr'g Tr. vol. 14, 4049:6-4054:4 (Nov. 20, 2018) (cross examination of Kevin Kochems by Carmen Thomas).)

SCE&G is subject to the jurisdiction of the Public Service Commission. *See* S.C. Code Ann. § 58-3-5; *id*. § 58-3-140(A). The Commission is the regulatory entity vested with the authority to set rates for SCE&G, including rates associated with the costs for the Project. *Id*. § 58-3-140(A). In connection with the Project, the General Assembly authorized Santee Cooper to own a forty-five percent (45%) interest in the Project. *Id*. § 58-31-200. To construct the Project, Santee Cooper contracted with SCE&G for SCE&G to serve as Santee Cooper's agent in managing the day-to-day aspects of the Project. (Merits Hr'g Tr. vol. 2, Test. of Gary Jones, 359:14-21 (Nov. 2, 2018).) SCE&G contractually assumed that role. While the Commission does not and cannot set Santee Cooper's rates, the Design and Construction Agreement, relied upon by SCE&G in this proceeding, is the agreement by and through which SCE&G took on the contractual role as the agent of Santee Cooper. (PSC Hearing Ex. 19, Design and Construction Agreement dated Oct. 20, 2011.) In doing so, it undertook a duty to Santee Cooper, its ratepayers, and the state. (Merits Hr'g Tr. vol. 3, Test. of Anthony James, 695:11-696:4 (Nov. 5, 2018).) Through the Merger, SCE&G seeks to terminate that undertaking and its duties to Santee Cooper's ratepayers.

Based upon Joint Applicants' submission of the request for Merger and in light of the General Assembly's approval of Santee Cooper's joint ownership in the Project with SCE&G,

the Commission finds that it has the authority to set the creation of a Public Interest Fund for the benefit of Santee Cooper's ratepayers as a condition of the Merger. As detailed below, the public interest is affected as it concerns Santee Cooper and its ratepayers. To omit Santee Cooper's ratepayers from the benefits under consideration would adversely affect those ratepayers and would not serve the public interest of all of South Carolina when SCE&G was the primary owner and contractually bound to oversee the project for both SCE&G and Santee Cooper.

II. Santee Cooper's interests are the interests of the people of the state of South Carolina.

The General Assembly created Santee Cooper "for the benefit of all the people of the state, for the improvement of their health and welfare and material prosperity," and by legislative decree its purposes "are public purposes." S.C. Code Ann. § 58-31-80. As a public asset, Santee Cooper pays its excess revenues "semiannually to the State Treasurer for the general funds of the State" as a means "to reduce the tax burdens on the people of this State." *Id.* § 58-31-110. The state Supreme Court has recognized that Santee Cooper is an "instrumentality of the State," *S.C. Pub. Serv. Auth. v. Citizens & S. Nat'l Bank*, 300 S.C. 142, 165, 386 S.E.2d 775, 778 (1989), and that it "is . . . in a real sense a part of the State . . . ." *Rice Hope Plantation v. S.C. Pub. Serv. Auth.*, 216 S.C. 500, 516, 59 S.E.2d 132, 138 (1950).

Therefore, the Commission finds, as a matter of law, that the interests of Santee Cooper are the public interest as it is owned by and for the people of South Carolina. Further, intervenors such as AARP and Wal-Mart have members and customers who are Santee Cooper ratepayers. (Merits Hr'g Tr. vol. 11, Test. of James R. Chapman, 2856:24-2857:13 (Nov. 15, 2018).) Moreover, Joint Petitioner Dominion recognizes Santee Cooper was created for, and

exists to serve, public purposes. (*Id.* at 2858:23-2859:3; Jt. Mot. to Dismiss and Strike Santee Cooper Pre-hearing Brief (Oct. 30, 2018), Ex. 1, 10/29/2018 Letter from Thomas Farrell to James Brogdon.) The conclusion that the public interest is affected by Santee Cooper's participation in the Project is inescapable.

III. The Joint Petition does not adequately protect the public interest as it concerns Santee Cooper's ratepayers.

In considering the public interest, the Commission finds it necessary to outline the averments of the Joint Petition and the relevant testimony of Mr. Chapman, Dominion's Senior Vice President, Chief Financial Officer, and Treasurer. In the Joint Petition, Petitioners averred:

- "This Merger, including the associated Customer Benefits Plan and other requisite terms, is demonstrably in the public interest, and the Petitioners respectfully request that this Commission issue an order to this effect." (Jt. Pet. p. 7, ¶ 10);

- "The Merger, including the Customer Benefits Plan, is in the public interest and will provide significant short-term and long-term benefits for SCE&G, its customers, *and the State of South Carolina*." (Jt. Pet. p. 23, ¶ 56) (emphasis added);

- "The Merger is in the public interest and will provide benefits to SCE&G customers *and to South Carolina*." (Jt. Pet. p. 26, ¶ 60) (emphasis added); and

- "SCE&G joins with Dominion Energy in affirming that the Merger is in the best interest of SCE&G's customers *and the State of South Carolina*." (Jt. Pet. p. 40, ¶ 95) (emphasis added).

Accordingly, the Commission finds that the Joint Petitioners' stated intent is to benefit the state of South Carolina.

Mr. Chapman testified that the Benefit Plan, as filed, does not include any benefit specifically for Santee Cooper's ratepayers. (Merits Hr'g Tr. vol. 11, Test. of James R. Chapman, 2860:2-5 (Nov. 15, 2018).) Mr. Chapman acknowledges Santee Cooper is a public utility owned by the people of South Carolina. (*Id.* at 2859:4-7.) Mr. Chapman admitted that

"Dominion has the ability to and recognizes that it should provide a benefit beyond simply SCE&G ratepayers." (*Id.* at 2858:21-2858:12.) Mr. Chapman also acknowledged that SCE&G's abandonment affected Santee Cooper's direct and indirect customers. (*Id.* at 2856:24-2857:2.)

Finally, Thomas Farrell, Chairman and CEO of Dominion, recognized the absence of any relief provided to Santee Cooper, its owners, and its ratepayers—and Dominion's ability to address that need:

> But there's a variety of things we could do, we think, in cooperation with Santee Cooper if we were the owners of SCANA, if you-all authorized us to . . . own SCANA and SCE&G, that could be helpful to Santee Cooper customers. I . . . understand Santee Cooper's concern. I get it. I get it. We're here offering $4 billion in benefits to SCE&G's customers and nobody's offering any benefits to Santee Cooper's customers. I understand that completely.

(Merits Hr'g Tr. vol. 12, Test. of Thomas Farrell, 3248:22-3249:6 (Nov. 16, 2018).)

In light of the admissions by Mr. Chapman and given the benefits the Joint Petitioners intend to provide, this Commission is concerned about Santee Cooper's ratepayers. They are residents of this state. This Commission must consider their interests and the state's energy plan. The Benefit Plans, as proposed by Joint Petitioners, leave Santee Cooper's customers out in the cold. Despite the averments by the Joint Petitioners concerning the desire to bestow benefit upon "South Carolina" and "the State of South Carolina" while seeking relief that purportedly will not cause "harm to South Carolina ratepayers as a result of the Merger," the hearing testimony of Mr. Chapman demonstrates that the Joint Petitioners have not included Santee Cooper's ratepayers in the benefit plan to the detriment of those Santee Cooper direct and indirect customers.

Based on the stated intent of the Merger plan and the desired result the Joint Petitioners seek from the Merger, the Commission finds that creation of the Santee Cooper Ratepayer Public

Interest Fund best serves the public interest. Failing to include Santee Cooper's ratepayers when Santee Cooper, the minority and public partner of SCE&G, relied on SCE&G for Project oversight would allow the Joint Petitioners to shun the duty to Santee Cooper, its ratepayers, and the state and people of South Carolina that SCE&G voluntarily assumed in the DCA.

The record evidence establishes that Santee Cooper is responsible for 45% of the capital costs of the Project excluding an Allowance for Funds Used During Construction ("AFUDC"), Owner's Costs, and items already in service. Santee Cooper has paid over $3 billion as its 45% share of those costs. (Merits Hr'g Tr. vol. 14, Test. of Kevin Kochems, 4049:13-4054:3 (Nov. 20, 2018).) Santee Cooper seeks a fund of $351 million, representing 65% of the costs charged to Santee Cooper customers as of December 31, 2017. This request is based on the formula used in SCE&G's Customer Benefit Plan proposal. This sum represents only a fraction of the total costs that Santee Cooper customers will bear going forward.

In order for the Merger to be approved, Dominion should create the fund requested by Santee Cooper. There is no downside to the inclusion of benefits for Santee Cooper. (Merits Hr'g Tr. vol. 5, Test. of Lane Kollen, 1234:9-1235:14 (Nov. 7, 2018) (testifying that he sees no "down side . . . at all" if the Commission, in the public interests, asks for a proposal or suggests Dominion enter into an agreement that would benefit Santee Cooper).) With the creation of the Public Interest Fund, all stakeholders would be properly included and recognized in the merger proceeding, thereby enabling the merger to serve the public interest.

Conclusion

Based on the foregoing, as part of its conditional approval of the pending merger request, this Commission finds favor with the merger should Dominion create a Public Interest Fund as

requested by Santee Cooper to provide relief for the benefit of Santee Cooper's direct and indirect customers.